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CONTEMPORARY FORMS OF SLAVERY

The recruitment of children into governmental and non-governmental armed forces

Updated report of the Secretary-General prepared pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/34

CONTENTS

		Paragraphs	Page
Introduction		1 - 6	2
I.	BACKGROUND	7 - 23	2
II.	INFORMATION RECEIVED FROM GOVERNMENTS	24 - 32	6
III.	INFORMATION RECEIVED FROM UNITED NATIONS ORGANS, SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS	33 - 43	7
IV.	INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS	44 - 45	11
V.	INFORMATION RECEIVED FROM OTHER ORGANIZATIONS	46	11

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Introduction

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1989/41 of 1 September 1989, requested the Secretary-General to submit to the Sub-Commission, at its forty-second session, a report on the adoption of children for commercial purposes and on the recruitment of children into governmental and non-governmental armed forces and their participation in hostilities, taking into account the comments of Governments and further information received by him. That report (E/CN.4/Sub.2/1990/43 and Add.1 and 2) was duly submitted to the Sub-Commission.

2. By its resolution 1990/30 of 31 August 1990, the Sub-Commission welcomed the decision of the Working Group to place this question on the agenda of its sixteenth session and invited the Working Group on Contemporary Forms of Slavery to make recommendations thereon (para. 15). By its resolution 1991/34 of 29 August 1991, the Sub-Commission requested the Secretary-General to update his report on the recruitment of children by governmental and non-governmental armed forces on the basis of information provided by Governments, the specialized agencies, relevant United Nations organs, regional and intergovernmental organizations, the International Committee of the Red Cross and the non-governmental organizations concerned, and to submit it to the Sub-Commission at its forty-fourth session (para. 13).

3. In accordance with Sub-Commission resolution 1991/34, Commission on Human Rights resolution 1992/47 and Commission decision 1992/115, the seventeenth session of the Working Group was held from 4 to 13 May 1992, to consider, inter alia, the question relating to child soldiers.

4. In compliance with Sub-Commission resolution 1991/34, Governments, United Nations bodies, the specialized agencies and intergovernmental and non-governmental organizations were requested to provide information on the recruitment of children into the armed forces through two letters sent on 15 November 1991 and on 9 April 1992.

5. As of 15 June 1992, replies had been received from the following States: Barbados, Equatorial Guinea, Israel, Liechtenstein, South Africa, Spain, Sweden, United Republic of Tanzania and Yugoslavia.

6. Replies were also received from the Economic Commission for Latin America and the Caribbean; the International Labour Office; the International Criminal Police Organization: the following non-governmental organizations: Friends World Committee for Consultation (Quakers), International Association of Lions Clubs, International Federation Terre des Hommes (2), International Save the Children Alliance, Law Association for Asia and the Pacific (LAWASIA), and World Movement of Mothers; and from the International Committee of the Red Cross.

I. BACKGROUND

7. Several international and regional instruments provide, specifically and/or in general, special protection for children involved in hostilities: the Geneva Declaration on the Rights of the Child of 1924, the Declaration on

the Rights of the Child of 1959, the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict of 1974, the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally of 1986, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985, the Fourth Geneva Convention of 1949 and the two Additional Protocols of 1977, as well as the 1989 Convention on the Rights of the Child, the United Nations Guidelines for the Prevention of Juvenile Delinquency (1990), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (1990), the African Charter on the Rights and Welfare of the Child (1990) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1991).

8. Article 77, "Protection of children", paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949, article 4, "Fundamental guarantees", paragraph 3 (c), of Additional Protocol II to the Geneva Conventions of 1949, and article 38, paragraph 3, of the Convention on the Rights of the Child establish that children who have not attained the age of 15 years do not take part in hostilities and that the parties to a conflict shall refrain from recruiting them into the armed forces. The special protection provided by article 77 and article 4 of the Additional Protocols to the 1949 Geneva Conventions will remain applicable if children who have not attained the age of 15 years take a direct part in hostilities and are captured (art. 77, para. 3, and art. 4, para. 3 (d)).

9. Paragraph 2 of article 77 of Additional Protocol I and paragraph 3 of article 38 of the Convention on the Rights of the Child further establish that in recruiting those persons who have attained the age of 15 years but who have not attained the age of 18 years, States parties shall endeavour to give priority to those who are the oldest.

10. Both Protocol I and Protocol II contain provisions relating to offences carrying the death penalty, specifying that it shall not be applied in the case of persons who were under the age of 18 years at the time of the offence (Protocol I, art. 77 and Protocol II, art. 6 (4)).

11. Article 22, paragraph 2, of the African Charter on the Rights of the Child reads: "States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and [shall] refrain, in particular, from recruiting any child". While article 22 does not mention the age limit, article 2 states that for the purpose of the Charter a child means every human being below the age of 18 years; the same age limit is set by article 1 of the Convention on the Rights of the Child.

12. Article 38 (4) of that Convention and article 22 (3) of the African Charter on the Rights of the Child state that in accordance with their obligations under international humanitarian law, States parties shall protect

the civilian population involved in armed conflict and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts.

13. From the provisions mentioned above it appears that, under international humanitarian law, children under the age of 15 cannot be recruited by governmental or non-governmental forces.

14. In their report Conscientious Objection to Military Service, Mr. Eide and Mr. Mubanga-Chipoya stated that:

> "Attention has also been drawn to a related but different problem, namely that of children and young adolescents in armed forces. Even when the individual child does not object to such service, it is doubtful that he can be sufficiently responsible to take such a decision, and in any case the use of children must be considered unacceptable. Since this is not a question of conscientious objection, it is not further dealt with in this report and material has not been collected on the occurrence of the phenomenon. But in the recommendations it has been suggested that the Sub-Commission should consider action to be taken to follow up this problem". 1/

15. The relationship between armed conflict and child refugees has also been extensively addressed by the Office of the United Nations High Commissioner for Refugees (UNHCR). Its 1988 Guidelines on Refugee Children are based on the concepts of the best interests of the child and family unity. The Guidelines identify priority issues and outline the practical steps field offices can take specifically to address the needs of refugee children. Within the section concerning action by UNHCR to promote and ensure the liberty of refugee children, the Guidelines state, inter alia, that measures are to be taken to ensure that refugee children do not become the victims of armed conflict; that the attention of the national authorities of the concerned country of asylum and UNHCR headquarters should be drawn to any instances of the recruitment, whether forced or voluntary, of children into the armed forces; and that priority attention is to be given to the immediate recovery, treatment, and rehabilitation of children who suffer trauma due to torture, abuse or other violence; funding for such treatment may be made available through the United Nations Voluntary Fund for Victims of Torture in Geneva. A separate section of the Guidelines focuses on the prevention and treatment of disabilities. Where individuals suffer disabilities related to their situation as refugees, such as those related to war, etc., appropriate rehabilitation services should be provided; community-based rehabilitation, as advocated by the World Health Organization and experts in the rehabilitation field, should be the basic strategy followed by UNHCR for field offices.

16. At its 891st meeting, on 5 April 1989, the Human Rights Committee, the monitoring body for the International Covenant on Civil and Political Rights, adopted a general comment on article 24 concerned with the rights of children. General Comment 17 states, inter alia, that:

> "... the reports submitted by States parties often seem to underestimate this obligation and supply inadequate information on the way in which children are afforded enjoyment of their right to special

protection ... Moreover, the Committee wishes to draw the attention of States parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts ... The Covenant does not indicate the age at which the child obtains his majority. This is to be determined by each State party in the light of the relevant social and cultural norms. However, the Committee notes that it should not be set unreasonably low and that in any case a State cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law". 2/

17. The issue of the recruitment and participation of children in hostilities had been brought to the attention of the Working Group on Contemporary Forms of Slavery and the Sub-Commission on Prevention of Discrimination and Protection of Minorities on several occasions.

18. At its fifteenth session, in 1990, the Working Group took note of the information presented on child soldiers in various countries. The members of the Working Group felt that the issue was an important one and decided to include this question in the agenda of the sixteenth session of the Working Group.

19. At its sixteenth session in 1991, the Working Group learned that there were more than 200,000 child soldiers in the world and that forced enlistment was still a common practice. The important role played by youth in the struggle for independence and against colonialism and apartheid was underlined, and the opinion was expressed that persons under the age of 18 years might not be sufficiently mature to understand the consequences of their actions and to comply with international humanitarian law.

20. The Working Group also expressed its deep concern that in many parts of the world children continued to take part in hostilities and were recruited into armed forces, and that some Governments and non-governmental organizations encouraged and sometimes compelled children to take part in hostilities. The Working Group recognized that children who had trained to hate and had participated in armed conflicts were often physically and morally crippled for life.

21. At the seventeenth session, consideration of the issue of child soldiers was postponed because of lack of information and included in the provisional agenda for the eighteenth session of the Working Group as agenda item 5 (e).

22. The Special Rapporteur on sale of children, Mr. Vitit Muntarbhorn, mentioned the question of child soldiers in his 1992 report (E/CN.4/1992/55, paras. 120-128 and 312). The Special Rapporteur stated that the question of child soldiers was closely related to that of child labour exploitation. He noted that, in principle, the age of conscription ranged from 15 to 18 but, in practice, much younger children were found to be child soldiers. The threshold age of 15 was too low and should be raised to 18 in accordance with the definition of the child contained in the Convention on the Rights of the Child. The Special Rapporteur thought that the military and the various combat groups should be encouraged not to use child soldiers and to abide by the precepts of international humanitarian law.

23. At its first session, held from 30 September to 18 October 1991, the Committee on the Rights of the Child decided that at its second session, scheduled to be held in Geneva from 28 September to 9 October 1992, it would devote one day to the topic "Children in armed conflicts".

II. INFORMATION RECEIVED FROM GOVERNMENTS

24. The Government of Barbados neither promotes or engages in the recruitment of children into the governmental or non-governmental armed forces.

25. The Republic of Equatorial Guinea has only regular armed forces, comprising Army, Navy and Air Force, and a national police force. There are no paramilitary groups. The minimum age for recruitment into the armed forces is 18.

26. The Government of Israel does not recruit children into governmental or non-governmental armed forces. Under the Defence Services Law 1986 the State may recruit persons aged 18 and over into armed forces. In accordance with the procedure for calculating the age of the conscript, it is possible that a person may be recruited at an age between 17 1/2 and 18. The Law also provides that a person aged 17 may be recruited at his request and with his parents' consent.

27. The armed forces were abolished in the Principality of Liechtenstein in 1868.

28. The rules governing the age of recruits and volunteers which are currently applied by the armed forces of the Government of South Africa are the following:

(a) Every citizen between the ages of 17 and 65 is liable to service in the South African Defence Force. This includes initial national service and subsequent camp commitments in the Citizen Force, the Commandos and the Reserve (Defence Action No. 44 of 1957, sect.3 (1) (b));

(b) No person under the age of 18 may be appointed as an officer in the South African Defence Force (General Regulations for the South African Defence Force, chap. III, reg. 3 (1));

(c) Chapter IV, regulation 3 (1) (a) of the General Regulations stipulates that the consent of the parent or guardian is required for service in the Permanent Force if the recruit is under 16;

(d) Chapter X, regulation 3 (1) (b) of the General Regulations stipulates that a person may be accepted for voluntary service at the age of 16;

(e) Regulation 13 of the Auxiliary Service Regulations stipulates that a person enrolled in the Auxiliary Service must be between the ages of 18 and 60.

29. There are no governmental armed forces in Spain. The armed forces, comprising the Army, Navy and Air Force, are responsible for guaranteeing Spain's sovereignty and independence and defending its territorial integrity

and constitutional system (art. 8, 1, of the Constitution). Military service is governed by article 30 of the Constitution, articles 35, 36 and 37 of Organic Law No. 6/1980, and Organic Law No. 13/1991, of 20 December.

30. The recruitment of soldiers into the government armed forces of Sweden is regulated by the National Military Services Act. Military service is compulsory in Sweden, with the exception of the special circumstances which apply to conscientious objectors under the above-mentioned Act. Military service liability applies to Swedish men from the year in which they attain the age of 18 until the year in which they attain the age of 47. The minimum age for enrolment in the Home Guard is attainment of the age of 18 in the course of the year of the enrolment. The minimum age for participation in the youth activities of the Home Guard is 15. Those who wish to participate in voluntary defence activities may do so in the year in which they reach the age of 16, and in the defence forces from the age of 18. Consequently, it may be noted that children are not recruited into the Swedish armed forces. There are no non-governmental armed forces in Sweden.

31. The policy of the Government of the United Republic of Tanzania does not permit recruitment of children into the armed forces.

32. The recruitment system of the Federal Republic of Yugoslavia prohibits all recruitment of children into the armed forces. The beginning of the calendar year in which a citizen becomes 17 years of age marks the beginning of the citizen's army obligation, which consists only of compulsory medical check-ups to ascertain the recruit's ability to perform military service. The recruit is drafted only once he is 18 years of age. Exceptionally, the Presidency of the Federal Republic of Yugoslavia may order the drafting of recruits of 17 years of age.

III. INFORMATION RECEIVED FROM UNITED NATIONS ORGANS, SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS

33. The Office of the United Nations High Commissioner for Refugees stated that its field offices are directed to submit substantiated reports of recruitment of refugee children into armed forces, be they State armies or guerrilla or insurgent forces, to the national authorities of the country concerned and to UNHCR headquarters. "Recruitment into armed forces", for UNHCR's purposes, includes not only forced recruitment but also voluntary participation in armed attacks, support functions such as carrying ammunition and acting as scouts for military patrols. In instances where recruitment is carried out by others than national authorities, strengthened police and military protection should be requested as a matter of course. 3/

34. In its Conclusion No. 59 (XL) (h) (1989), the Executive Committee of the High Commissioner's Programme called upon the organization to promote the best possible legal protection of unaccompanied minors, particularly with regard to forced recruitment into armed forces, and to the risks associated with irregular adoption. Furthermore, in its Conclusion No. 47 (XXXVIII) (e) (1987), the Executive Committee condemned the exposure of refugee children to physical violations and other violations of

their basic rights, including through sexual abuse, trade in children, acts of piracy, military or armed attacks, forced recruitment, political exploitation or arbitrary detention, and called for national and international action to prevent such violations and to assist the victims.

35. Refugee children are not only the victims of violence, but sometimes also participate, although often unwillingly. In certain countries, refugee children are increasingly being subjected to forced conscription into armed groups, 4/ and it has been difficult to protect refugee children fully in these situations. An increased police and military presence could help in some situations, and the assistance of the International Committee of the Red Cross (ICRC) could be sought. 5/

36. The International Labour Office stated that the Committee of Experts on the Application of Conventions and Recommendations, in a comprehensive study of the application of the Convention concerning Forced or Compulsory Labour (No. 29), 1930, and of the Convention concerning the Abolition of Forced Labour (No. 105), 1957, referred to restrictions on the freedom of workers to leave their employment. The Committee noted that, in a number of countries, the status of career military personnel is governed by legislation under which the exercise of the right to leave the service is subject to an authorization. In this connection, the Committee of Experts referred to the situation of young people enrolled in the army while still minors, with the consent of their parents. The Committee noted, both in the study and in comments addressed to various Governments, that young people enrolled while still minors must have the right to leave the service at 18 years of age or within a reasonable period thereafter, so as to preserve their right to free choice of employment.

37. In its report "Child soldiers: the recruitment of children into armed forces and their participation in hostilities" (January 1992) the Friends World Committee for Consultation (Quakers) reported on the situation of child soldiers in Afghanistan, Angola, Cambodia, Colombia, El Salvador, Ethiopia, Guatemala, Honduras, Iran (Islamic Republic of), Iraq, Israel and the Occupied Territories, Lebanon, Mozambique, Myanmar, Nicaragua, Peru, the Philippines, Sri Lanka, Sudan, Uganda and the United Kingdom.

38. According to the Friends World Committee for Consultation, in the world today tens of thousands of children under 18 years of age are fighting alongside adult soldiers or in separate units. Some of these child soldiers are reported to be as young as seven years old. As most wars are taking place in the developing world, most of the children participating in armed conflicts come from those countries. However, several Governments in Europe and in North America subsidize military training for persons under the age of 18 years and allow boys and sometimes girls of 16 and 17 to enlist voluntarily in the armed forces. The United Kingdom continues to recruit and use persons under the age of 18 years in the armed forces. While the United Kingdom refrains from sending children on active duty to Northern Ireland, it did send young British recruits to participate in the Falklands/Malvinas conflict and in the recent Gulf war. In both these conflicts British soldiers under the age of 18 were killed and injured.

39. In its report, the Friends World Committee for Consultation made the following recommendations:

(a) Ratification of existing international instruments. States should be encouraged to ratify the Geneva Conventions of 1949 and the Additional Protocols of 1977, and the Convention on the Rights of the Child (1989). Violations of the Geneva Conventions and the Additional Protocols should be regarded as a breach of contract; State parties should take measures to ensure that other ratifying States respect humanitarian principles;

(b) Implementation of existing standards. The United Nations should appoint a special rapporteur or working group to monitor the implementation of existing standards concerning the recruitment of children into armed forces and their participation in hostilities. Alternatively, the Commission on Human Rights could decide to enlarge the mandate of its Special Rapporteur on the sale of children, child prostitution and child pornography so as to include child soldiers. The Committee on the Rights of the Child and the Human Rights Committee should question States parties about their military recruitment practices with regard to children under the age of 18 years. In its role as guardian of international humanitarian law, the International Committee of the Red Cross should be helped in its efforts to see that the special provisions in favour of children are respected by the parties to the conflict and their participation in hostilities avoided. The International Committee of the Red Cross should be fully supported in encouraging the parties to the conflict to comply with article 77, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949. In particular, States parties, when recruiting persons between 15 and 18 years, should endeavour to give priority to those who are oldest;

(c) Raising the age of recruitment into armed forces. States should be encouraged to make unilateral declarations stating that they will not recruit persons under 18 years in the their armed forces. States parties to the Geneva Conventions should consider raising the age of recruitment from 15 to 18 years. An optional protocol could also be added to the Convention on the Rights of the Child by which ratifying States would agree not to recruit into their armed forces persons under 18 years of age;

(d) High-level study. The United Nations Secretary-General should conduct a high-level study of the recruitment of children into armed forces by Governments, paramilitary groups and opposition movements, and make recommendations. Alternatively, the ICRC could undertake a study on the recruitment and participation of children as soldiers in armed conflicts, and on measures to reduce and eventually eliminate such recruitment and participation;

(e) Catering for the needs of child soldiers. The United Nations and non-governmental agencies should provide all necessary assistance to those children who have suffered physical or mental injury on account of their participation in armed forces and in war;

(f) Refugee children. Children fleeing recruitment into armed forces should be recognized as refugees and guaranteed protection and assistance by the international community;

(g) Advisory services and technical assistance. The United Nations should provide advice and technical assistance to Governments and non-governmental organizations wishing better to understand and implement existing standards concerning the recruitment of children into armed forces and participation in hostilities. Bodies such as UNHCR and UNICEF should bring together Governments, non-governmental organizations and experts familiar with the situation of children in armed conflicts and anxious to improve health, education, employment and social services for reintegrating ex-child soldiers into civilian society;

(h) Armed opposition groups. Those Governments, political movements and others who have friendly relations with armed opposition groups should exert their influence and encourage those groups to respect international norms governing hostilities.

40. The International Federation Terre des Hommes regards the recruitment of children of less than 18 years of age into the armed forces as an inhuman practice resulting in the denial of their most fundamental rights. It is difficult to assess the extent of the damage which such a practice can cause to the life of a child, but it can jeopardize his whole future and inflict incalculable suffering. Many children are wounded or killed in the course of conflicts, others develop serious psychological or behavioural disorders, while still others are captured and become prisoners of war. Their detention may continue long after the end of the conflict, so that they are deprived of precious formative years. Most children are forcibly recruited, although some of them enlist "voluntarily", driven by hunger or their ideological environment, factors which also represent forms of coercion. There are no reliable statistics on the number of such child soldiers, but they are thought to number in the tens of thousands, some of them as young as seven years of age.

41. Article 38 of the Convention on the Rights of the Child sets the minimum age for recruitment into the armed forces at 15. In ratifying this Convention, five States declared that they considered this age to be too low. This type of declaration should be encouraged and emulated by many of the States parties to the Convention. States parties could also consider amending the Convention to prohibit the recruitment of children under 18 years of age into the armed forces. The Sub-Commission on Prevention of Discrimination and Protection of Minorities could also recommend the appointment of a special rapporteur to study the question of children in armed conflicts.

42. Finally, States and non-governmental organizations should cooperate actively to establish rehabilitation programmes for children traumatized by their participation in an armed conflict. One movement belonging to the Federation supports a programme of mental health care for children traumatized by the war in Nicaragua and a similar programme in the Philippines. Programmes of this kind should be introduced in any area suffering the effects of armed conflict.

43. The January 1992 Newsletter of the International Save the Children Alliance was devoted to "Children in Wars". According to the Alliance, article 38 of the Convention on the Rights of the Child was by no means satisfactory to those particularly concerned with the welfare of children

because any involvement of children in armed conflicts was not acceptable. Save the Children strove to secure full protection for children in combat situations and considered violence and war to be unacceptable means of solving conflicts and righting injustice.

IV. INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

44. The Law Association for Asia and the Pacific (LAWASIA) provided the Secretary-General with a report entitled "Filipino children in situations of armed conflicts" (available, in English, in the files of the United Nations Centre for Human Rights). Particular attention is drawn to the recommendations on pages 21 to 23.

45. The World Movement of Mothers stated that the minimum age for recruiting children into governmental and non-governmental armed forces should be 18 and not 15 years. The Movement strongly protested against the recruiting of children aged 7 or 8 years by certain Governments and some international terrorist organizations.

V. INFORMATION RECEIVED FROM OTHER ORGANIZATIONS

46. On 13 November 1991, the Council of Delegates of the International Red Cross and Red Crescent Movement adopted a resolution on "child soldiers", in which it recognized that children who have been caught up in armed conflicts, particularly those who have taken part in hostilities, are often marked for life, mentally, morally and physically. The Council called on all parties to armed conflicts to observe strictly the rules of international humanitarian law according special protection to children, invited States and other parties to armed conflicts to strengthen the protection of children in such conflicts through unilateral declarations or bilateral or regional action setting the minimum age for participating in hostilities at 18.

Notes

1/ United Nations publication, Sales No. E.85.XIV.1, para. 10; see also para. 154.

2/ Report of the Human Rights Committee, Offical Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40), annex VI.

3/ UNHCR Guidelines on Refugee Children, para. 26 (e).

4/ Note on International Protection (A/AC.96/728) submitted to the Executive Committee at its fortieth session in 1989.

5/ Report on Refugee Children (A/AC.96/731), paras. 9-10.